IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4920 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHAYANSINGH @ DHANNO RAJENDRASINGH RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

Mr. Pravin Gondaliya for the petitioner.

Mr.A.J.Desai, AGP for the respondents.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

Heard learned Advocate Asim Pandya for the petitioner and learned A.G.P. Mr. A.J.Desai, on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 27-5-1999 passed by the Commissioner of Police, Ahmedabad (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner -detenu under Sec.9(1) of "PASA" , copy of which is produced at running page 16 inter alia indicate that in all five prohibition cases were registered at Nashabandi (East) Police Station as well as Gomtipur Police Station between 10-8-1997 to 7-4-1999. That in each case countrymade liquor has been seized from the possession of the petitioner. That except the case registered vide CR no.5377/97 dated 22-11-1997 which is pending for trial in Court all other cases are pending investigation.

2.1 The grounds of detention further indicate that two witnesses have given statements dated 25-5-1999 and 26-5-1999 regarding bootlegging activities of the petititioner-detenu and have related the alleged incidents dated 3-5-1999 and 11-5-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order suffers from the vice of non application of mind inasmuch as the detaining authority has failed to consider the aspect of less drastic remedy like opposing and/or claiming cancellation of bail as available under Sec.437(5) of the Cr.P.C. and therefore the subjective satisfaction reached by the detaining authority stands vitiated rendering the impugned order bad in law.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved

and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On scrutiny of papers, it appears that the respondent no.1 as detaining authority has failed to consider less drastic remedy like opposing and/or cancellation of bail. It is observed in the grounds of detention that the petitioner is in judicial custody in respect to cases registered vide CR no.105/97 and CR no.225/98 while he is on bail in respect to other cases registered against him. It is further observed that the petitioner is likely to move bail application in the said two cases and after getting himself released on bail is likely to continue his bootlegging activities and therefore to prevent him, the detention order is necessary. The said observation suggests that the impugned order is based on apprehension and not on fact. It also suggests that the detaining authority has failed to consider the aspect of less drastic remedy like opposing and/or cancellation of bail as available under Sec.437(5) of the Cr.P.C. which has vitiated the subjective satisfaction reached by the detaining authority and has rendered the impugned order invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 27-5-1999 passed by the Commissioner of Police, Ahmedabad (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Dhayansingh alias Dhanno Rajendrasingh Rajput is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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